

STATE OF MICHIGAN
COURT OF APPEALS

STEVE LAWRENCE LaCOSS,

Plaintiff-Appellant,

v

DEPUTY WARDEN T. M. BIRKETT, RUM
TETREAULT, SERGEANT DELMAGE, D. RUO
POTILA, RUO SWEANY, and OFFICER JAY
COOK,

Defendants-Appellees.

UNPUBLISHED

April 21, 2000

No. 207666

Ingham Circuit Court

LC No. 98-084169-AW

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order denying his request for a writ of mandamus because of mootness and dismissing his remaining claims for lack of venue and lack of jurisdiction. We reverse and remand for further proceedings.

Plaintiff, proceeding in propria persona, brought a variety of civil rights claims in Ingham Circuit Court against defendants in both their official capacities and as individuals under 42 USC 1983. Plaintiff asserted a variety of federal and state constitutional violations predicated on defendants' actions of refusing him participation in scheduled "yard time," allegedly because plaintiff was using the law library. Plaintiff sought damages, equitable and declaratory relief, and mandamus directing defendants to comply with all relevant statutes and Department of Corrections policies. Defendants did not answer plaintiff's complaint, but did eventually move for summary disposition on all claims pursuant to MCR 2.116(C)(7) and (8). Defendants argued that plaintiff's claims were barred by governmental immunity, that the various allegations failed to state a claim on which relief could be granted, and that plaintiff's request for mandamus was moot by virtue of plaintiff's transfer to a different facility. The circuit court subsequently decided the matter without benefit of oral argument, pursuant to MCR 2.119(E)(3).

The court initially concluded that plaintiff's complaint for mandamus was moot because after he filed suit, he was transferred from the Standish Maximum Correctional Facility, where the alleged wrongful conduct occurred, to another facility. The court did not address the remaining bases for

summary disposition proffered by defendants. Instead, the court sua sponte raised the issues of jurisdiction and venue. The court held that as to plaintiff's other claims against the defendants in their official capacities, the complaint was one against the state. The court noted that the Court of Claims has exclusive jurisdiction over claims for money damages against the state, and that any ancillary claims must also be pursued in the Court of Claims. Consequently, the court dismissed these claims, reasoning that the Ingham Circuit Court lacked jurisdiction. Finally, the court determined that as to plaintiff's only remaining claims, those pursued against defendants individually, venue was improper. The court reasoned that plaintiff should have filed his suit in Arenac County, where the Standish facility is located, because that was where the cause of action accrued and where defendants were employed. The court dismissed those claims also, without considering transfer and without providing the parties notice or a hearing.

Plaintiff argues that the circuit court erred in dismissing his claims against defendants for lack of jurisdiction and improper venue. Plaintiff also argues that the court erred when it dismissed his request for a writ of mandamus on a finding that the issue was moot. We agree that the circuit court erred in dismissing plaintiff's complaint on these bases. We remand for further proceedings and direct the circuit court to address the alternative grounds for summary disposition presented by defendants.

A circuit court's determination of subject matter jurisdiction presents a question of law that we review de novo. *In re Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999). Likewise, a court's determination of whether venue is proper is a question of law reviewed de novo. See *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 151-152; 532 NW2d 899 (1995).

Initially, we find that the circuit court abused its discretion in denying plaintiff's request for a writ of mandamus on the ground that the issue was moot. See *In re MCI Telecommunications Complaint*, 460 Mich 396, 443-444; 596 NW2d 164 (1999). If a question is moot and the granting of a writ of mandamus would serve no purpose, then mandamus should be denied. *Detroit City Council v Stecher*, 153 Mich App 601, 606; 396 NW2d 444 (1986), rev'd on other grounds, 430 Mich 74 (1988). However, a case is not moot when it presents issues that are capable of repetition and which would evade review. *Id.* Here, the circuit court determined that plaintiff's claim had been rendered moot by virtue of his transfer from the Standish maximum security correctional facility. However, the record indicates that plaintiff is serving a twenty-five to fifty year sentence. It is also apparent that from the time of his incarceration, and specifically since he filed the instant action, plaintiff has been transferred to different prison facilities on numerous occasions. It is not inconceivable, therefore, that before plaintiff's sentence runs he will be transferred back to the Standish facility where the alleged wrongful conduct could be repeated. Because plaintiff could re-file this action, only to be transferred once more, these issues could evade review. Dismissal of the mandamus claim was inappropriate on this record. Accordingly, dismissal of the complaint on the basis of improper venue was also inappropriate. Pursuant to MCR 3.305(B)(2), venue was proper in Ingham County for plaintiff's mandamus action. Because MCR 2.203(A) provides that plaintiff was required to join all claims arising out of the same transaction or occurrence, venue was also proper for plaintiff's additional claims. MCL 600.1641(1); MSA 27A.1641(1).¹

The question of jurisdiction presents a more complicated issue. Neither a state nor its officials acting in their official capacities are "persons" for purposes of a damage suit under 42 USC 1983. *Will v Michigan Dep't of State Police*, 491 US 58; 109 S Ct 2304; 105 L Ed 2d 45 (1989), affirming *Smith v Dep't of Public Health*, 428 Mich 540, 544; 410 NW2d 749 (1987); *Jones v Powell*, 227 Mich App 662, 669; 577 NW2d 130 (1998); *Carlton v Dep't of Corrections*, 215 Mich App 490, 502; 546 NW2d 671 (1996). However, to the extent plaintiff sued defendants in their official capacities based on protections afforded directly by the Michigan Constitution, plaintiff may nevertheless have a damages remedy against the state. *Smith, supra* at 544, 642 (Boyle, J.); *Carlton, supra* at 504-505.² Moreover, a state official sued in his individual capacity is not protected by the holdings of *Will* and *Smith*. See *Goodmon v Rockefeller*, 947 F2d 1186, 1187 (CA 4, 1991). Also, plaintiff's claims for injunctive and mandamus relief could be pursued under § 1983 in all respects.

The circuit court reasoned that it had no jurisdiction over plaintiff's claims against defendants, finding that, as an action for damages against the state, jurisdiction is vested in the Court of Claims. Claims for monetary damages, brought against state officers in their official capacities, fall within the exclusive jurisdiction of the Court of Claims. MCL 600.6419; MSA 27A.6419; *Silverman v University of Michigan Bd of Regents*, 445 Mich 209, 217; 516 NW2d 54 (1994); *Carlton, supra* at 501. Ancillary claims for equitable and declaratory relief are also within the jurisdiction of the Court of Claims. MCL 600.6419a; MSA 27A.6419a; *Silverman, supra*; see also *Pomann, Callanan & Sofen, PC v Wayne Co Dep't of Social Services*, 166 Mich App 342, 346-347; 419 NW2d 787 (1988). Although the circuit court's reasoning in this regard was correct, it was error for the court to dismiss plaintiff's claims for lack of jurisdiction because the Court of Claims is a function of the Ingham Circuit Court, not a distinct entity. MCL 600.6404; MSA 27A.6404.

Pursuant to §6404 of the Revised Judicature Act, each circuit judge of the thirtieth judicial circuit (Ingham County), whenever considering a matter within the exclusive jurisdiction of the Court of Claims under §6419, functions as a Court of Claims Judge. Accordingly, to the extent plaintiff's pleadings assert claims against the state, for administrative purposes, the Ingham County Circuit Court may treat the case as having been filed in the Court of Claims. See *MSEA v Civil Service Comm*, 177 Mich App 231, 238-239; 441 NW2d 423 (1989). In as much as plaintiff's pleadings assert claims against defendants in their individual capacity, jurisdiction is proper in the Ingham Circuit Court. Thus, plaintiff properly filed his complaint in the Ingham Circuit Court, which comprises both the circuit court and the Court of Claims. Dismissal of plaintiff's claims on the basis of lack of jurisdiction was inappropriate.

Reversed. We remand for further proceedings on defendants' motion for summary disposition. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Helene N. White

¹ We additionally note that improper venue is not ground for dismissal; rather, the proper remedy is change of venue. See *Whiting v Neuman*, 11 Mich App 201, 206-207; 160 NW2d 795 (1968).

Furthermore, even if brought in an improper venue, an action may still be tried in such county unless a defendant moves for change of venue in the manner provided by court rule. MCL 600.1651; MSA 27A.1651. Here, defendants failed to object to venue, thereby waiving the issue. MCR 2.221(C). Also, assuming that venue is improper, change of venue may be ordered on the court's own initiative only with notice to the parties and an opportunity for them to be heard on the venue question. MCR 2.223(A)(2). As indicated, the circuit court failed to provide these parties with notice and a hearing.

² Because plaintiff is a prisoner proceeding in propria persona, he is entitled to have his pleadings broadly construed. *Estelle v Gamble*, 429 US 97, 106; 97 S Ct 285; 50 L Ed 2d 251 (1976); *Haines v Kerner*, 404 US 519; 92 S Ct 594; 30 L Ed 2d 652 (1972).